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UNITED STATES DISTRICT COURT

10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 BAY AREA PAINTERS AND TAPERS  
12 PENSION TRUST FUND, and its JOINT  
12 BOARD OF TRUSTEES; LES PROTEAU and  
13 CHARLES DEL MONTE, TRUSTEES;  
13 DISTRICT COUNCIL 16 NORTHERN  
14 CALIFORNIA HEALTH AND WELFARE  
14 TRUST FUND, and its JOINT BOARD OF  
15 TRUSTEES; DOUG CHRISTOPHER and  
15 JOHN MAGGIORE, TRUSTEES;  
16 DISTRICT COUNCIL 16 NORTHERN  
17 CALIFORNIA JOURNEYMAN &  
17 APPRENTICE TRAINING TRUST FUND,  
18 and its JOINT BOARD OF TRUSTEES;  
18 DOUG CHRISTOPHER and MARION  
19 BOURBOULIS, TRUSTEES;  
20 and DISTRICT COUNCIL 16 OF THE  
21 INTERNATIONAL UNION OF PAINTERS  
21 AND ALLIED TRADES,

22 Plaintiffs,

23 v.

24 DI GIROLAMO PAINTING AND  
25 DECORATING, INC., a California  
25 Corporation; EDWIN MARK  
26 DI GIROLAMO, an Individual and *dba* DI  
26 GIROLAMO PAINTING & DECORATING,

27 Defendants.

Case No.: C11-3964 WHA

**NOTICE AND ACKNOWLEDGMENT  
and JUDGMENT PURSUANT TO  
STIPULATION**

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1 IT IS HEREBY STIPULATED and AGREED (the "Stipulation") by and between the  
2 parties hereto, that Judgment shall be entered in the within action in favor of the Plaintiffs BAY  
3 AREA PAINTERS AND TAPERS PENSION TRUST FUND, et al. (collectively "Plaintiffs" or  
4 "Trust Funds") and against Defendants DI GIROLAMO PAINTING AND DECORATING, INC.,  
5 a California Corporation; EDWIN MARK DI GIROLAMO, an Individual and *dba* DI  
6 GIROLAMO PAINTING & DECORATING, and/or alter egos and/or successor entities  
7 ("Defendants"), as follows:

8 1. Defendants entered into a valid Collective Bargaining Agreement with the District  
9 Council 16 of the International Union of Painters and Allied Trades (hereinafter "Bargaining  
10 Agreement"). This Bargaining Agreement has continued in full force and effect to the present  
11 time.

12 2. Edwin Mark Di Girolamo, RMO/CEO/President of Defendant Di Girolamo  
13 Painting and Decorating, Inc., and as individual Defendant and Owner of the *dba* Defendant Di  
14 Girolamo Painting & Decorating, hereby acknowledges that he is authorized to receive service and  
15 has received the following documents in this action: Summons; Complaint; Dispute Resolution  
16 Procedures in the Northern District of California; Order Setting Initial Case Management  
17 Conference and ADR Deadlines; Standing Order for Magistrate Judge Donna M. Ryu; Standing  
18 Order for All Judges of the Northern District of California; Instructions for Completion of ADR  
19 Forms Regarding Selection of an ADR Process; Stipulation and [Proposed Order] Selecting ADR  
20 Process; Notice of Need for ADR Phone Conference; ADR Certification by Parties and Counsel;  
21 ECF Registration Information Handout; Welcome to the U.S. District Court, Oakland; Notice of  
22 Assignment to a Magistrate Judge, Consent, Declination; Certification of Interested Entities or  
23 Persons Pursuant to Civil Local Rule 3-16; Declination to Proceed Before a Magistrate Judge and  
24 Request for Reassignment to a United States District Judge; Notice of Impending Reassignment to  
25 a United States District Court Judge; and Reassignment Order.

26 3. Defendants have become indebted to the Trust Funds as follows:  
27 ///

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1			
2	Audit (1/1/07-3/31/10)	Contributions	\$10,414.29
3		20% Liquidated Damages	\$2,082.86
4		Interest (to 7/31/10)	\$1,184.86
5		Audit Testing Fees	\$1,679.00
6		<Overpayments credit>	<\$140.01>
7			\$15,221.00
8	5% p/a Interest on Audit (8/1/10-9/28/11)		\$604.88
9	3/11 Contribution balance	\$36.18	
	Liquidated damages	\$431.16	
	5% p/a interest (to 9/28/11)	\$2.80	
			\$470.14
8	Attorneys' fees (3/12/10-9/23/11)		\$3,142.50
9	Cost of filing suit		\$350.00
9	<b>TOTAL</b>		<b>\$19,788.52</b>

10       4. Defendants shall *conditionally* pay the amount of **\$17,274.50**, representing all  
 11 above amounts, less liquidated damages in the amount of **\$2,514.02**. *This conditional waiver is*  
 12 *expressly conditioned upon Trustee approval upon timely compliance with all of the terms of this*  
 13 *Stipulation*, as follows:

14       (a) Beginning on October 15, 2011, and on or before the 15th day of each  
 15 month thereafter, for a period of twelve (12) months, through September 15, 2012, Defendants  
 16 shall pay to Plaintiffs the amount of **\$1,500.00** per month.

17       (b) Payments may be made by joint check, to be endorsed to Plaintiffs prior to  
 18 submission. Defendants shall have the right to increase the monthly payments at any time and  
 19 there is no penalty for prepayment.

20       (c) Payments shall be applied first to unpaid interest and then to unpaid  
 21 principal. The unpaid principal balance shall bear interest from September 29, 2011, at the rate of  
 22 5% per annum in accordance with the Collective Bargaining Agreement and Plaintiffs' Trust  
 23 Agreements.

24       (d) Checks shall be made payable to the *Bay Area Painters and Tapers Trust*  
 25 *Funds*, and delivered on or before each due date to Michele R. Stafford at Saltzman & Johnson  
 26 Law Corporation, 44 Montgomery Street, Suite 2110, San Francisco, California 94104, or to such  
 27 other address as may be specified by Plaintiffs.

28

7 (f) Prior to the last payment pursuant to this Stipulation, Plaintiffs shall advise  
8 Defendants, in writing, as to the final amount due, including interest and all additional attorneys'  
9 fees and costs incurred by Plaintiffs in connection with collection and allocation of the amounts  
10 owed to Plaintiffs under this Stipulation. Defendants shall pay all fees and costs regardless of  
11 whether or not Defendants default herein. Any additional amounts due pursuant to the provisions  
12 hereunder shall also be paid in full with the September 15, 2012 stipulated payment.

15        5. In the event that any check is not timely submitted or fails to clear the bank, or is  
16 unable to be negotiated for any reason for which Defendants are responsible, Defendants shall be  
17 considered to be in default of the Judgment entered. If this occurs, Plaintiffs shall make a written  
18 demand to Defendants to cure said default *within seven (7) days of the date of the notice from*  
19 *Plaintiffs.* If caused by a failed check, default will only be cured by the issuance of a replacement  
20 *cashier's check,* delivered to Saltzman and Johnson Law Corporation within the seven (7) day  
21 cure period. If Defendants elect to cure said default, and Plaintiffs elect to accept future payments,  
22 *all such future payments shall be made by cashier's check.* In the event default is not cured, all  
23 amounts remaining due hereunder shall be due and payable on demand by Plaintiffs.

24        6. Beginning with contributions due for hours worked by Defendants' employees  
25 during the month of August 2011, due on September 15, 2011 and delinquent if not received by  
26 the Trust Funds before the last business day of the month, and for every month thereafter until this  
27 Judgment is satisfied, **Defendants shall remain current in contributions** due to Plaintiffs under

1 the current Collective Bargaining Agreement and under all subsequent Collective Bargaining  
 2 Agreements, if any, and the Declarations of Trust as amended. Defendants shall fax a copy of its  
 3 contribution report for each month, together with a copy of that payment check, *to Michele R.*  
 4 *Stafford at 415-882 9287*, prior to sending the payment to the Trust Fund office.

5 Failure to comply with these terms shall also constitute a default of the obligations under  
 6 this Agreement and the provisions of ¶ 11 shall apply.

7. Defendants shall make full disclosure of all jobs on which they are working by  
 8 providing Plaintiffs with an ongoing and updated list of jobs including, but not limited to, the  
 9 name and address of the job, the start and completion dates, the identity of General  
 10 Contractor/Owner/Developer, and by providing certified payroll if it is a public works job. To the  
 11 extent that Defendants are working on a Public Works job, or any other job for which Certified  
 12 Payroll Reports are required, copies of said Reports *will be faxed to Michele R. Stafford*  
 13 concurrently with their submission to the General Contractor, Owner or other reporting agency.

14 These requirements are concurrent with, and in addition to the requirements set forth above  
 15 with regard to progress payments. Defendants shall fax said updated list each month (or sooner if  
 16 required elsewhere herein) together with the contribution report (as required by ¶6 of this  
 17 Stipulation) *to Michele R. Stafford at 415-882-9287*, on or before the 15<sup>th</sup> day of each month.  
 18 Attached hereto as *Exhibit A* is a Job Report Form which is to be completed each month.

19. Failure to comply with any of the above terms shall constitute a default of the  
 20 obligations under this Agreement and the provisions of ¶11 shall apply. Any unpaid or late paid  
 21 contributions, together with 20% liquidated damages and 5% per annum interest accrued on the  
 22 contributions, pursuant to the Trust Agreements, shall be added to and become a part of this  
 23 Judgment and subject to the terms herein. Plaintiffs reserve all rights available under the  
 24 applicable Bargaining Agreement and Declarations of Trust of the Trust Funds for collection of  
 25 current and future contributions, and for any additional past contributions not included herein as  
 26 may be determined by Plaintiffs, pursuant to employee timecards or paystubs, by audit, or other  
 27 means, and the provisions of this agreement are in addition thereto. Defendants specifically waive  
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1 the defense of the doctrine *res judicata* as to any such additional amounts determined as due.

2       9. EDWIN MARK DI GIROLAMO acknowledges that he is the RMO/CEO/President  
 3 of Defendant Di Girolamo Painting and Decorating, Inc., as well as being an individually named  
 4 Defendant in the instant matter and doing business as Di Girolamo Painting & Decorating. Edwin  
 5 Mark Di Girolamo, on behalf of all named Defendants, specifically consents to the Court's  
 6 jurisdiction as well as the use of a Magistrate Judge for all proceedings herein. Edwin Mark Di  
 7 Girolamo ("Guarantor") also confirms that he is personally guaranteeing all amounts to be paid in  
 8 connection with Stipulation, and further acknowledges that any and all successors in interest to Di  
 9 Girolamo Painting and Decorating, Inc. and Di Girolamo Painting & Decorating, as well as any  
 10 assigns, and/or affiliated entities and purchasers, shall be contractually bound by the terms of this  
 11 Stipulation. This shall include any additional entities in which Edwin Mark Di Girolamo is an  
 12 officer, owner or possesses any ownership interest. All such entities shall specifically consent to  
 13 the terms herein and to the Court's jurisdiction, in writing at the time of any assignment, affiliation  
 14 or purchase.

15     10. Prior to the last payment pursuant to this Judgment Pursuant to Stipulation,  
 16 Plaintiffs shall advise Defendants, in writing, as to the final lump sum amount due, including  
 17 interest and all additional attorneys' fees and costs incurred by Plaintiffs in connection with  
 18 collection and allocation of the amounts owed to Plaintiffs under this Stipulation regardless of  
 19 whether or not Defendants default herein. Any additional amounts due pursuant to the provisions  
 20 hereunder shall also be paid in full with the September 15, 2012 stipulated payment.

21     11. In the event that Defendants fail to make any payment required under ¶4 above, or  
 22 fails to remain current in any contributions under ¶6 above or fails to timely provide the monthly  
 23 documents required by ¶¶6 and 7 herein, and that such default is not timely cured, the following  
 24 will occur:

25           (a) The entire balance of **\$19,788.52**, as specified in ¶3, plus interest, but  
 26 reduced by principal payments received from Defendants/Guarantor, in addition to any unpaid  
 27 contributions then due plus 20% liquidated damages and 5% per annum interest on the unpaid or  
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1 late paid contributions, shall be immediately due and payable, together with any attorneys' fees  
2 and costs incurred during the term of this Stipulation;

3 (b) A Writ of Execution may be obtained against Defendants/Guarantor without  
4 further notice, in the amount of the unpaid balance, plus any additional amounts under the terms  
5 herein, upon declaration by a duly authorized representative of the Plaintiffs setting forth any  
6 payment theretofore made by or on behalf of Defendants/Guarantor and the balance due and  
7 owing as of the date of default.

8 (c) Defendants/Guarantors waive any notice of Entry of Judgment or of any  
9 Request for a Writ of Execution upon default, and expressly waive all rights to stay of execution  
10 and appeal. The declaration or affidavit of a duly authorized representative of Plaintiffs as to the  
11 balance due and owing as of the date of default shall be sufficient to secure the issuance of a Writ  
12 of Execution, without notice to Defendants/Guarantors.

13 (d) Defendants/Guarantor shall pay all additional attorneys' fees and costs  
14 incurred by Plaintiffs in connection with collection and allocation of the amounts owed by  
15 Defendants/Guarantors to Plaintiffs under this Stipulation, whether or not a default occurs herein.

16 12. Any failure on the part of the Plaintiffs to take any action against  
17 Defendants/Guarantor as provided herein in the event of any breach of the provisions of this  
18 Stipulation shall not be deemed a waiver of any subsequent breach by the Defendants/Guarantor of  
19 any provisions herein.

20 13. In the event of the filing of a bankruptcy petition by the Defendants/Guarantor, the  
21 parties agree that any payments made pursuant to the terms of this Judgment, shall be deemed to  
22 have been made in the ordinary course of business as provided under 11 U.S.C. Section 547(c)(2)  
23 and shall not be claimed by Defendants/Guarantor as a preference under 11 U.S.C. Section 547 or  
24 otherwise. Defendants/Guarantor nevertheless represent that no bankruptcy filing is anticipated.

25 14. Should any provision of this Stipulation be declared or determined by any court of  
26 competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and  
27 enforceability of the remaining parts, terms or provisions shall not be affected thereby and said  
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1 illegal, unenforceable or invalid part, term, or provision shall be deemed not to be part of this  
2 Stipulation.

3       15. This Stipulation is limited to the agreement between the parties with respect to the  
4 delinquent contributions and related sums enumerated herein, owed by Defendants/Guarantor to  
5 the Plaintiffs. This Stipulation does not in any manner relate to withdrawal liability claims, if any.  
6 Defendants/Guarantor acknowledges that the Plaintiffs expressly reserve their right to pursue  
7 withdrawal liability claims, if any, against Defendants/Guarantor and all of their control group  
8 members, as provided by the Plaintiffs' Plan Documents, Trust Agreements incorporated into their  
9 Collective Bargaining Agreement, and applicable laws and regulations.

10      16. This Stipulation contains all of the terms agreed by the parties and no other  
11 agreements have been made. Any changes to this Stipulation shall be effective only if made in  
12 writing and signed by all parties hereto.

13      17. This Stipulation may be executed in any number of counterparts and by facsimile,  
14 each of which shall be deemed an original and all of which shall constitute the same instrument.

15      18. Defendants/Guarantor represent and warrant that they have had the opportunity to  
16 be or have been represented by counsel of their own choosing in connection with entering this  
17 Stipulation under the terms and conditions set forth herein, that they have read this Agreement  
18 with care and is fully aware of and represent that they enter into this Stipulation voluntarily and  
19 without duress.

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1       19. The parties agree that the Court shall retain jurisdiction of this matter ~~until this~~  
2 ~~Judgment is satisfied.~~ for sixty (60) days.

Dated: September 30, 2011

## **DI GIROLAMO PAINTING AND DECORATING, INC.**

By: /S/ Edwin Mark Di Girolamo  
Edwin Mark Di Girolamo, RMO/CEO/President

Dated: September 30, 2011

**EDWIN MARK DI GIROLAMO dba DI  
GIROLAMO PAINTING & DECORATING**

By: /S/ Edwin Mark Di Girolamo  
Edwin Mark Di Girolamo, Owner

Dated: September 30, 2011

## **EDWIN MARK DI GIROLAMO**

By: /S/ Edwin Mark Di Girolamo  
Individual Defendant and as Personal Guarantor

Dated: October 12, 2011

## **SALTZMAN AND JOHNSON LAW CORPORATION**

By: /S/Michele R. Stafford  
Michele R. Stafford  
Attorneys for Plaintiffs  
Bay Area Painters & Tapers Trust Funds

## 18 | IT IS SO ORDERED.

**19 IT IS FURTHER ORDERED that the calendar in this matter is vacated, and that the Court shall retain jurisdiction over this matter for sixty (60) days. THE CLERK SHALL CLOSE THE FILE.**

**21** | Dated: October 14 , 2011

Wm Alsup  
UNITED STATES DISTRICT COURT JUDGE  
WILLIAM ALSUP

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***EXHIBIT A***

## **JUDGMENT PURSUANT TO STIPULATION**

## ***JOB REPORT FORM***

**\*\*\* Updated report must be faxed to Michele R. Stafford, Esq., at (415) 882-9287  
on the 15<sup>th</sup> day of each month \*\*\***

**Employer Name:** DI GIROLAMO PAINTING AND DECORATING, INC.; DI  
GIROLAMO PAINTING & DECORATING

Report for the month of \_\_\_\_\_ Submitted by: \_\_\_\_\_

Project Name:			
Project Address:			
General Contractor:			
General Contractor Address/Tel. #:			
Contract #:		Date of Contract:	
Total Value of Contract:			
Work Start Date:		Work Completion Date:	

15	Project Name:			
16	Project Address:			
17	General Contractor:			
18	General Contractor Address/Tel. #:			
19	Contract #:	Date of Contract:		
	Total Value of Contract:			
	Work Start Date:		Work Completion Date:	

21	Project Name:	
22	Project Address:	
23	General Contractor:	
24	General Contractor Address/Tel. #:	
25	Contract #:	Date of Contract:
Total Value of Contract:		
Work Start Date:		Work Completion Date:

*\*\*\* Attach additional sheets as necessary \*\*\**